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DEC 31 2008

THE STATE OF MICHIGAN
Berrien County
Prosecutors Office
IN THE TRIAL COURT FOR THE COUNTY OF BERRIEN

THE PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

-v-

RICHARD DAIRREESE SMITH, JR.,
Defendant.

MOTION AND EX PARTE
ORDER TO SET ASIDE
CONVICTION AND DISMISS
CASE

JUDGE GARY J. BRUCE

File No. 2007 400189 FH

ARTHUR J. COTTER (P38007)
Berrien County Prosecutor
811 Port Street
St. Joseph, MI 49085
(269) 983-7111 Ext. 8311

MOTION

NOW COMES Arthur J. Cotter, Berrien County Prosecutor, and moves this Court to set aside the conviction of the Defendant in the instant case, dismiss the charge(s), and discharge the Defendant from any remaining sentence imposed in this matter for the reasons that newly discovered evidence indicates that the investigating officer perjured himself in an affidavit pertaining to Defendant's case and this conviction can no longer be sustained.

December 23, 2008


Arthur J. Cotter
Berrien County Prosecuting Attorney

EXHIBIT A

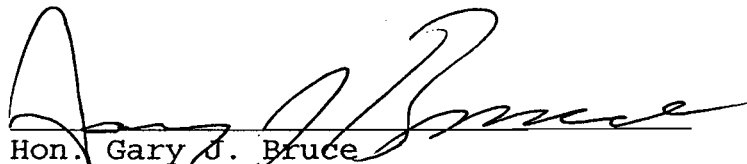
ORDER

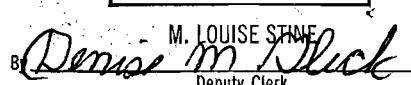
At a session of said Court in
the City of St. Joseph, Berrien
County, Michigan on the 23
day of December, 2008.

PRESENT: THE HONORABLE GARY J. BRUCE, BERRIEN COUNTY CRIMINAL
TRIAL JUDGE

UPON READING AND FILING of the Prosecutor's Ex Parte
Motion to Set Aside Conviction and Dismiss Case, and the court
being fully advised in the premises;

IT IS HEREBY ORDERED that Defendant's conviction is hereby
set aside, the charges are thereupon dismissed, and the
Defendant is hereby discharged from any remaining sentence
imposed in this matter.


Hon. Gary J. Bruce
Berrien County Criminal Trial Judge

STATE OF MICHIGAN CIRCUIT COURT FOR COUNTY OF BERRIEN I certify that I have compared this copy with the original on file in this court & that it is a correct copy of the whole of such original
DEC 30 2008
M. LOUISE STINE  Deputy Clerk